

## **REMARKS:**

### **I. Introduction**

In the Office Action mailed on February 19, 2009, the Examiner rejected claims 10, 11, 13 and 14. The present amendment cancels no claims, amends claims 10, 13, and 14, and new claims 15 to 23. Accordingly, claims 10, 11, 13, 14 and 15 to 23 are now pending in this application.

### **II. Claim Rejections Based on 35 U.S.C. § 112**

The examiner rejected claims 10, 11, 13 and 14 under 35. U.S.C. § 103(a), second paragraph, as indefinite. The examiner stated that "if the insulating material is secured to the inner surface of the stretchable layer, it will inherently get compressed by the stretching of the outer layer over it since it is no longer protected and enclosed by the toe box and will contradict the claim limitations which requires the insulating material to be in an uncompressed state." Applicant respectfully disagrees, the leather outer layer does not stretch other than when it is stretched over the toe box during assembly. With regard to the examiner's comment regarding claim 14, applicant notes that the insulation material is located within the toe box and outside the toe box. However, the language cited by the examiner has been deleted in order to expedite the prosecution of the present application. Reconsideration and withdrawal of the rejection is requested.

### **III. Claim Rejections Based on 35 U.S.C. § 103(a)**

(a) The Examiner rejected claims 10 and 24 under 35. U.S.C. § 103(a) as unpatentable over White (US 3,805,419).

White discloses a toe cap assembly (7) for a safety shoe that includes a toe cap (1) and a cushioning foam layer (5) located within the toe cap (1). The cushioning material is located only within the toe cap (1) (best shown in FIG. 1).

In contrast, the present invention is a thermally insulated boot having a layer of compressible cold insulating material extending both within a toe box and outside the toe box. The compressible cold insulating material is a high loft fiber insulation. The toe box is sized so that the insulating material is not compressed so that it retains its high insulating quality.

Claims 10 and 14, and claims dependent therefrom, are allowable because they each include the limitation of “a layer of compressible cold insulating material in its uncompressed state, the cold insulating material located within the outer layer of stretchable leather outside the toe box and extending into the toe box and having a constant thickness in the toe box and an area outside the toe box and adjacent to the toe box, the cold insulating material secured to an underside of the toe box” and “wherein the compressible cold insulating material is a high loft fiber insulation”. No prior art of record reasonably discloses the present invention as now claimed by claims 10 and 14. Reconsideration and withdrawal of the rejection is requested.

**(b)** The Examiner rejected claims 10 and 24 under 35. U.S.C. § 103(a) as unpatentable over TechBoot (WO 92/14372) in view of White (US 3,805,419).

TechBoot discloses a boot having a toe cap (27) and a foam sock liner that extends into the toe cap (27). The foam sock liner is “padded with a non flammable polymeric foam.

In contrast, the present invention is a thermally insulated boot having a layer of compressible cold insulating material in the form of a high loft fiber insulation. The toe box is sized so that the insulating material is not compressed so that it retains its high insulating quality.

Claims 10 and 14, and claims dependent therefrom, are allowable because they each include the limitation of “a layer of compressible cold insulating material in its uncompressed state, the cold insulating material located within the outer layer of stretchable leather outside the toe box and extending into the toe box and having a constant thickness in the toe box and an area outside the toe box and adjacent to the toe box, the cold insulating material secured to an underside of the toe box” and “wherein the compressible cold insulating material is a high loft fiber insulation”. No prior art of record reasonably discloses the present invention as now claimed by claims 10 and 14. Reconsideration and withdrawal of the rejection is requested.

**(c)** The Examiner rejected claim 11 under 35. U.S.C. § 103(a) as unpatentable over TechBoot (WO 92/14372) in view of White (US 3,805,419) and further in view of Hill (US 2,814,888).

Claim 11 is allowable as depending from allowable claim 10 as discussed above and independently allowable for novel and nonobvious matter contained therein. Reconsideration and withdrawal of the rejection is requested.

(d) The Examiner rejected claim 13 under 35. U.S.C. § 103(a) as unpatentable over TechBoot (WO 92/14372) in view of White (US 3,805,419) and further in view of Hill (US 2,814,888) and further in view of Aumann (US 5,689,903).

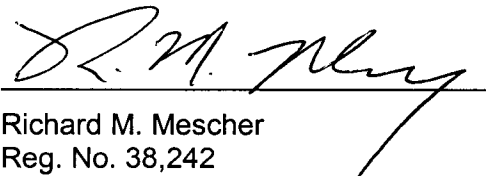
As discussed above, TechBoot and White address completely different problems than the present invention. Hill and Aumann do not overcome the limitations of TechBoot and White.

Claim 13, and claims dependent therefrom, are allowable because they each include the limitation of "a layer of compressible cold insulating material in its uncompressed state, the cold insulating material located within the outer layer of stretchable leather outside the toe box and extending into the toe box and having a constant thickness in the toe box and an area outside the toe box and adjacent to the toe box, the cold insulating material secured to an underside of the toe box" and "wherein the compressible cold insulating material is a high loft fiber insulation". No prior art of record reasonably discloses the present invention as now claimed by claim 13. Reconsideration and withdrawal of the rejection is requested.

#### IV. CONCLUSION

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is found that that the present amendment does not place the application in a condition for allowance, Applicant's undersigned attorney requests that the Examiner initiate a telephone interview to expedite prosecution of the application. If there are any fees resulting from this communication, please charge same to our Deposit Account No. 50-3915.

Respectfully submitted,



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